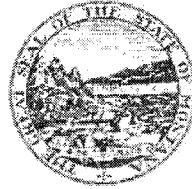


MONTANA STATE AUDITOR

MONICA J. LINDEEN
STATE AUDITOR



COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

January 29, 2009

VIA HAND DELIVERY

Senator Joe Balyeat, Chairman
Senate Business, Labor and Economic Affairs Committee
P.O. Box 200500
Helena, Montana 59620

Dear Mr. Chairman:

Several questions were asked of the State Auditor's Office during the hearing on SB 142 on Tuesday, January 27, 2009. In particular, you raised a question as to the fiscal note for the present bill as opposed to a similar bill carried by Senator Duane Grimes during the 2005 session. I did not have the benefit of the earlier fiscal note in providing a response at the hearing, however, I have since reviewed both fiscal notes and I am providing this letter in an effort to assist you and the other members of the Committee with your question(s).

I. SB 351 (2005)

The 2005 fiscal note of SB 351, arrives at a cost \$218,000 to implement the requirements of SB 351. It states that funds to cover those costs would come from the special revenue account, rather than general fund monies. This impact was addressed in the Fiscal Analysis section of the fiscal note in assumption #7. "The fiscal impact of this bill will be funded with State Special Revenue and will have a direct impact upon the fees paid by the insurance industry."

In terms of the revenue side of the equation, the 2005 fiscal note appears erroneous. The note suggests that \$218,000 in special revenue expenditures would be offset by \$218,000 in revenue. To the best of my knowledge, this assumption appears based upon an underlying assumption that fee revenue for filings would offset the cost(s), however, filing fees for this office were no longer collected after 2001. Thus, it appears that this earlier assumption of a revenue offset was, in fact, incorrect. The fiscal impact as projected on the 2005 fiscal note would remain at \$218,000.

II. SB 142 (2009)

Our office prepared a current fiscal note for SB 142. You will note in Assumption No. 3 on the current note that the 2005 fiscal note was prepared prior to the Montana "deemer" law, enacted during the 2005 session as part of SB 434. This law mandates that all filings with our office, not approved or denied with sixty (60) days be "deemed" approved. § 33-1-501(2), MCA. The



"deemer" law represents a fundamental and important change in the form approval process since the first fiscal note.

The current fiscal note for SB 142 reflects an assumption that 1,255 health and 3,175 life and annuity policies were issued in FY 2008. Given the adoption of the deemer law discussed above, the changes to Montana law proposed by the bill, and the attempted exemptions relating to reproductive care, we estimated personal services for 4 additional in-house FTE at \$314,451 for FY 2010 and 2011, which is our Forms Bureau estimate of additional staff resources required.

An estimate of 5 hours was used to review and approve each disability policy or certificate and 2 hours for each life or annuity policy or certificate. Many forms being marketed in Montana are at least ten years old, greatly increasing the workload when these forms are re-filed. The bureau estimated 12,475 man hours would be required to adequately address the change(s) proposed in the bill. Budgeted overtime compensation is estimated at \$99,720 for the biennium.

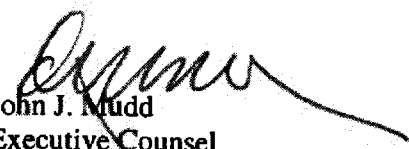
As with the 2005 fiscal note, we are estimating contract actuarial fees of \$444,000 for review of the property and casualty as well as life and disability rate filings anticipated for the 2011 biennium. Our Rates Bureau estimates that there will be an increase of approximately 170 property and casualty rate filings, and an increase of approximately 200 life and disability rate filings. The cost per filing is \$1,200. This is an increase from the 2005 fiscal note, where we estimated an increase of 100 property and casualty rate filings, and an increase of 72 life and disability rate filings. In 2005 the cost per rate filing was approximately \$800. As with the 2005 fiscal note, the funds for this are to come from the State Special Revenue Account.

In summary, the proposed changes from SB 142 will require significant filings with this office. These filings are projected to include not only typical numbers of new filings this office receives on a yearly basis, but additional and significant filings that will be required to amend existing policies in place, some of which date back more than ten years.

In 2005, the Legislature concluded that these filings must be reviewed and approved by this office within sixty (60) days, or be deemed approved. Protection of Montana policy holders requires that the Department of Insurance have adequate staffing to address the anticipated changes required by SB 142.

Mr. Chairman, should you have any additional questions or concerns, please do not hesitate to contact me at 444-5222.

Very truly yours,



John J. Mudd
Executive Counsel
State Auditor's Office